

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

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Chong Hao Su,  
Plaintiff

vs

Case No. 1:07-cv-592-MRB-TSH  
(Barrett, J.; Hogan, M. J.)

Paula Y. Boggs, et. al.,  
Defendants

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**REPORT AND RECOMMENDATION**

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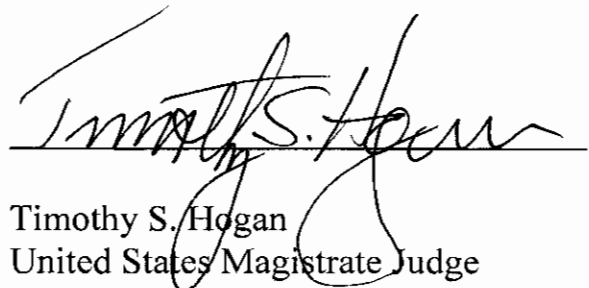
This matter is before the Court on Defendant's Motion to Dismiss (Doc. 10) and pro se plaintiff's memoranda in opposition to dismissal (Doc. 13, 14).

Defendant Paula Boggs was a prosecutor for the City of Cincinnati and was involved in the criminal prosecution of plaintiff on charges of solicitation. Plaintiff filed a complaint in this Court asserting that the actions of defendant Boggs, and an unnamed "city inspector" from the City Prosecutor's Office violated his federal constitutional rights. Plaintiff seeks relief from this Court including a protection order to prohibit his prosecution on criminal charges. (Doc. 4, Complaint, pp. 4-5).

Defendants argue that plaintiff's claims against Boggs are barred by the doctrine of prosecutorial immunity and should be dismissed. This argument is well-taken. Plaintiff was charged with solicitation and subject to criminal prosecution. Defendant Boggs functioned as a prosecutor by responding to plaintiff's discovery requests in the criminal case. Plaintiff's complaint fails to set forth any allegations that Boggs was acting outside the scope of her role as a prosecutor with respect to plaintiff or his criminal case. She is entitled to absolute prosecutorial immunity. *Imbler v. Pachtman*, 424 U.S. 409, 430-31 (1976); *Lanier v. Bryant*, 332 F.3d 999, 1005 (6<sup>th</sup> Cir. 2003).

As for plaintiff's claims against the "City Prosecutor Office," the Office itself is a department within a municipality and therefore does not have capacity to be sued. *Rhodes v. McDaniel*, 945 F.2d 117, 120 (6<sup>th</sup> Cir. 1991). To the extent that plaintiff attempts to assert claims against the City Prosecutor, Ernest McAdmas, the complaint fails to make any allegations that he participated directly or indirectly in plaintiff's prosecution and therefore fails to support a claim for unconstitutional conduct. *Petty v. County of Franklin, Ohio*, 478 F.3d 341, 349 (6<sup>th</sup> Cir. 2007); *Bellamy v. Bradley*, 729 F.2d 416, 421 (6<sup>th</sup> Cir. 1984).

For these reasons, defendants' Motion to Dismiss should be GRANTED, the remaining motion in this case should be DENIED AS MOOT, and this case should be dismissed from the docket of this Court.



Timothy S. Hogan  
United States Magistrate Judge

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**NOTICE**

Attached hereto is the Report and Recommended decision of the Honorable Timothy S. Hogan, United States Magistrate Judge, which was filed on **5-15-08**. Any party may object to the Magistrate's findings, recommendations, and report within (10) days after being served with a copy thereof or further appeal is waived. *See United States v. Walters*, 638 F.2d 947 (6th Cir. 1981). Such parties shall file with the Clerk of Court, and serve on all Parties, the Judge, and the Magistrate, a written Motion to Review which shall specifically identify the portions of the proposed findings, recommendations, or report to which objection is made along with a memorandum of law setting forth the basis for such objection, (such parties shall file with the Clerk a transcript of the specific portions of any evidentiary proceedings to which an objection is made).

In the event a party files a Motion to Review the Magistrate's Findings, Recommendations and Report, all other parties shall respond to said Motion to Review within ten (10) days after being served a copy thereof.

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| 1. Article Addressed to:<br><br><b>Chong Hao Su</b><br><b>203-205 East 13th St.</b><br><b>Apt. 11</b><br><b>Cinti, OH 45202</b>  |  | B. Received by (Printed Name)   | C. Date of Delivery |
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